



October 27, 2016

Via email: rule-comments@sec.gov

Mr. Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Comments in Response to Proposed Rule re Exhibit Hyperlinks and HTML Format (File Number S7-19-16)

Dear Mr. Fields:

On August 31, 2016, the Securities and Exchange Commission (the “Commission” or “SEC”) proposed amendments to Item 601 of Regulation S-K and Rules 102 and 105 of Regulations S-T (the “Hyperlink Proposal”)¹ that would require registrants that file registration statements and periodic and current reports that are subject to the exhibit requirements under Item 601 of Regulation S-K, or that file on Forms F-10 or 20-F, to include a hyperlink to each exhibit listed in the exhibit index of these filings. To enable the inclusion of such hyperlinks, the proposed amendments would also require that registrants submit all such filings in Hypertext Markup Language (“HTML”) format.

The Structured Finance Industry Group (“SFIG”)² appreciates the opportunity to respond to the Commission’s request for comment on the Hyperlink Proposal. Although the Hyperlink Proposal requested comments on a wide variety of topics, this letter will focus only on the topics and questions relevant to asset-backed securities and will not address all of the topics or questions

¹ Release Nos. 33-10201; 34-78737; File No. S7-19-16, dated August 31, 2016. Asset-Backed Securities Disclosure and Registration, 81 Fed. Reg. 62689 (Sep. 12, 2016).

² SFIG is a member-based, trade industry advocacy group focused on improving and strengthening the broader structured finance and securitization market. SFIG provides an inclusive network for securitization professionals to collaborate and, as industry leaders, drive necessary changes, be advocates for the securitization community, share best practices and innovative ideas, and educate industry members through conferences and other programs. Members of SFIG represent all sectors of the securitization market including issuers, investors, financial intermediaries, law firms, accounting firms, technology firms, rating agencies, servicers, and trustees. Further information can be found at www.sfindustry.org.



included in the Hyperlink Proposal. Therefore, the numbers preceding the paragraphs below are not sequential and correspond to the numbering in the Hyperlinks Proposal.

1. *Should we require registrants to include hyperlinks from the exhibit index to the exhibits identified in the index for the registration statements and reports, as proposed?*

SFIG members are generally supportive of the Hyperlink Proposal (with the limitations described below) and support the Commission’s efforts to create a filing and retrieval system that allows investors and other information users to more easily locate and access previously filed exhibits. We also agree with the Commission’s assertion in the Hyperlink Proposal that “hyperlinks would not only supply users with the location of a specific exhibit, but also allow users to reach that location more easily and quickly.”³

2. *Should we exclude the Form ABS-EE exhibits and the XBRL exhibits that are filed with other forms as proposed? What would be the costs and benefits to requiring registrants to hyperlink to such exhibits?*

SFIG members support the exclusion of Form ABS-EE exhibits and XBRL exhibits from the hyperlink requirements because they do not believe the benefits of requiring hyperlinks to such exhibits justify the costs and burdens of providing those hyperlinks. As the Commission described in the Hyperlink Proposal, Form ABS-EE is used “solely to facilitate the filing of tagged data and related information that must be filed as exhibits to the form”⁴ and, because the exhibits to a Form ABS-EE are directly attached to that Form ABS-EE filing and cannot be incorporated by reference, an investor should have no difficulties locating or accessing the applicable attached exhibits. Similarly, XBRL exhibits are composed of unconverted code and are not incorporated by reference into other filings, so there would be no need for an investor to locate those exhibits while viewing another filing.

3. *Registrants often file multiple pre-effective amendments before a registration statement becomes effective. Each pre-effective amendment may include one or more exhibits that the registrant has not filed previously. For example, when a registrant first files a Form S-1, the registrant will list the exhibits and indicate by asterisk and footnote those that will be filed in future amendments. By the time the registration statement becomes effective, the registrant typically has filed most or all of the exhibits in previous amendments. Should we require registrants to include hyperlinks to the exhibits filed with the initial registration statement and each pre-effective amendment? Should we require registrants to include hyperlinks from the exhibit index to the exhibits included in each pre-effective amendment to all of the exhibits filed with each such amendment, as well as previously filed exhibits to the registration statement? Should we require that active hyperlinks be included in other*

³ 81 Federal Register 62689, at 62694.

⁴ 81 Federal Register 62689, at 62690.



pre-effective registration statements, such as those that include a preliminary prospectus distributed in connection with an offer, often known as a red herring prospectus?

SFIG members support the view that hyperlinks are most beneficial if included in the exhibit index of the registration statement (or pre-effective amendment) filed immediately prior to effectiveness. The effective version of the registration statement is the version that will most often be reviewed by investors and other users, and because exhibits may be revised or replaced during the registration process, it is the only version that references all of the proper exhibits. Earlier versions of the registration statement may reference exhibits that have been superseded, which could cause confusion or errors. The justifications for not including hyperlinks in registration statements that are not effective applies whether or not the form of preliminary prospectus included in that version of the registration statement is distributed to investors. In many instances, an amendment to the registration statement containing additional or revised exhibits will be filed after the filing of the registration statement containing a preliminary prospectus that was distributed to investors. Including hyperlinks in the prior version of the registration statement in those instances could result in inaccurate or ineffective links. Therefore, requiring hyperlinks only in the version of the registration statement that is declared effective would eliminate the burden of creating references that may not be used and eliminate some hyperlinks to superseded exhibits.

5. *Are there any particular difficulties in requiring registrants to provide hyperlinks to the exhibits identified in Item 601 of Regulation S-K that are filed with a registration statement or report as proposed?*

As described above, although SFIG members are generally supportive of the Hyperlink Proposal, we do not believe that registrants should be subject to additional potential liability or need to perform additional compliance procedures as a result of attempting to provide those hyperlinks and that the Commission should include a provision protecting registrants from unintended hyperlinking errors. Although advances in technology allow for more efficient document storage and retrieval, such advances can also add complexity and increase the possibility of errors in linking, locating or accessing documents. For example, although a registrant can test a hyperlink in the environment of its own systems for accuracy prior to filing, it cannot do that testing in the EDGAR environment to ensure that hyperlinks in documents once filed will actually function as intended. Likewise, once exhibits are filed on EDGAR, the registrant does not have the ability to control the EDGAR system environment to ensure that the hyperlinks continue to work as intended. Even if hyperlinks function properly when the documents are first filed, the hyperlinks are dependent on the location of the exhibits on the EDGAR system and the EDGAR system itself remaining static. If changes occur in the EDGAR system, the hyperlinks could become ineffective (not linking to any document) or worse, inaccurate (linking to the wrong document), and there may be no way for the registrant to identify or rectify the problem.



In addition, Registrants are concerned that the rule as proposed would require them to constantly monitor their filings to validate the proper functioning of the hyperlinks, both to ensure that their filings are complete and accurate for liability purposes and to ensure that registrants maintain their eligibility to use effective registration statements. Registrants believe it would be excessively burdensome for them to be required to review every hyperlink of every filing pursuant to an annual compliance check or otherwise to ensure that all hyperlinks are functioning properly or risk not being able to use an effective shelf registration statement because there is a concern that the registration statement is no longer compliant as a result of an ineffective or inaccurate hyperlink. In addition, even if a registrant identifies an ineffective or inaccurate hyperlink after filing, they are unsure what the mechanism would be to rectify the problem, as refiling may not be a workable or cost effective option. Therefore, because of the limited ability of registrants to verify hyperlinks prior to filing and the inability of registrants to control the EDGAR system and remediate problems when they occur, we encourage the Commission to create a safe harbor for registrants limiting their liability and responsibility for ineffective or inaccurate hyperlinks and to eliminate the uncertainties that may result therefrom with respect to the use of existing registration statements.

The members of SFIG believe a provision should be added to the proposed revisions in C.F.R. Section 229.601(a)(2) and to any other provision of the rules that requires the insertion of hyperlinks to the effect that, if a registrant has taken reasonable steps prior to filing to ensure the proper function of a hyperlink, (i) the registrant shall be deemed to have satisfied the requirement for inclusion of the required hyperlink in the filing for all purposes and such filing shall not be considered deficient in any manner with respect to the inclusion of hyperlinks, whether or not such hyperlink is effective in accessing the referenced document, (ii) that no information accessed through a required hyperlink that is not the referenced document shall be deemed to be part of the registration statement or report for any purpose and that only the information or material contained in the reference document will be incorporated into the registration statement or report, as applicable, and (iii) the registrant shall have no liability under the Securities Act of 1933 or the Securities Exchange Act of 1934 for any ineffective or inaccurate hyperlink.

- 6. Our rules currently do not require a registrant that filed an exhibit in paper prior to the time that it became subject to mandated electronic filing on EDGAR to refile the exhibit in electronic format, although the registrant has the option to do so. Our rules permit a registrant to incorporate by reference an exhibit previously filed in paper into electronic filings. Accordingly, there may be some instances in which a registrant incorporates by reference an exhibit previously filed in paper, such as its articles of incorporation, into a Form 10-K or other form, but cannot include a hyperlink to that paper-based exhibit. Accordingly, a proposed instruction to amended Rule 105 of Regulation S-T would provide that no hyperlink is required for any exhibit incorporated by reference that has not been filed in electronic format. Should we require registrants to refile electronically any exhibit previously filed in paper so that they can include a hyperlink from the exhibit index to the***



exhibit? If so, how long should registrants be given to refile such exhibits? Are there alternatives that we should consider to address this situation?

In general, the SFIG members do not believe that the cost and burden to registrants of requiring them to refile electronically any exhibit previously filed in paper would be justified by the benefit to investors and other information users from that effort. The premise of allowing registrant to use previously filed exhibits is to avoid the cost and burden of filing and refile documents. We note that some registrants already refile certain exhibits when the EDGAR system was first put into place. In addition, all previously filed registration statements and reports will not contain hyperlinks, so even if this part of the proposal was implemented, not every exhibit to every registration statement or report would be accessible through a hyperlink. Therefore, we support adding an instruction to amended Rule 105 of Regulation S-T providing that a hyperlink will not be required for any exhibit incorporated by reference that has not been filed in electronic format.

8. *Are there more effective ways to improve access to documents filed as exhibits by registrants that we should consider? As an alternative to the proposed amendments, should we require registrants to file and update a compilation of exhibits separately from the Form 10-K or other forms? If so, which exhibits should be included in the compilation and how frequently should registrants have to update them? Should we revise the exhibit numbering scheme to help investors more readily identify exhibits? Would a more detailed numbering or identification system improve investors' access to the information filed as exhibits?*

SFIG members believe the use of hyperlinks as proposed is the best alternative for simplifying the process of locating and accessing previously filed exhibits. In particular, we strongly believe requiring registrants to file and update a separate compilation of exhibits would only further complicate the process by adding another layer of complexity and add significant additional cost and administrative burden on registrants while providing minimal additional benefit to investors or other users of the EDGAR system in comparison to the use of hyperlinks.

In summary, SFIG members generally support the requirement to include hyperlinks from an exhibit index filed as part of a registration statement or report to exhibits incorporated by reference into that filing. With the exclusions described above, we believe the Hyperlink Proposal strikes an appropriate balance between providing efficient and cost effective access to investors and other users and the cost and burden on registrants of compliance with the rule.



SFIG appreciates the opportunity to provide the foregoing comments. Should you wish to discuss any matters addressed in this letter further, please contact me at [REDACTED] or at [REDACTED].

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "R. Johns", is written over a horizontal line.

Richard Johns
Executive Director
Structured Finance Industry Group